



July 26, 2000

Ms. Pamela Smith
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2000-2816

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137411.

The Texas Department of Public Safety (the “department”) received a request for

all documents, notes, memoranda, interviews, etc., produced or relied upon by all investigators who contributed to the facts stated in a June 5, 1989 letter from Joe G. Murphy, Commander, Criminal Intelligence Service, to Bill Meincke, Executive Secretary, Texas Racing Commission. The letter . . . transmits the findings of, ‘an intensive background investigation,’ by the Texas Department of Public Safety regarding Corpus Christi Greyhound Racing Associates’ application. We are particularly interested in any such materials related to Corpus Christi Racing Corporation (Florida applicants).

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 2.16 of article 179e of Vernon’s Civil Statutes. We have considered the exception you claim and reviewed the submitted representative sample of the information at issue.¹

Section 552.101 excepts from required public disclosure “information that is confidential by

¹We assume that the “representative sample” of records submitted to this office is truly representative of all of the information at issue. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

law, either constitutional, statutory, or by judicial decision.” Accordingly, it encompasses confidentiality provisions such as section 2.16 of article 179e of Vernon’s Civil Statutes. Article 179e, the “Texas Racing Act,” regulates horse racing and greyhound racing in Texas. Section 2.16 states in relevant part:

Except as otherwise provided by this Act, the files, records, information, compilations, documents, photographs, reports, summaries, and reviews of information and related matters that are collected, retained, or compiled by the Department of Public Safety in the discharge of its duties under this Act are confidential and are not subject to public disclosure

V.T.C.S. art. 179e, § 2.16(a). You explain that as the agency responsible for conducting background investigations on persons seeking racetrack licenses from the Texas Racing Commission, the department collected the requested information pursuant to such a background investigation. *See* V.T.C.S. art. 179e, § 6.031. Based on these representations, we agree that the requested information is confidential under section 552.101 of the Government Code in conjunction with section 2.16 of article 179e of Vernon’s Civil Statutes. Therefore, the department must withhold the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

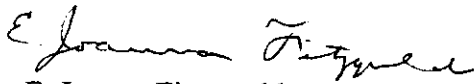
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at

877/673-6839. The requestor may also file a complaint with the district or county attorney.
Id. § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 137411

Encl: Submitted documents

cc: Mr. Fred Dombo
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(w/o enclosures)